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Development Rights and Water Body Protection: Colloquium

The Real Estate Law Society of the Pace University School of Law held a regional conference on "Development Rights and Water Body Protection" on February 19, 1992. Three of the panelists — John Nolon, Professor, Pace University School of Law; Sarah J. Meyland, Esq., Executive Director, Citizens Campaign for the Environment in Massapequa, New York; and Peter Q. Eschweiler, A.I.C.P., former Commissioner of Planning, Westchester County, New York — have provided the Pace Environmental Law Review with articles based on their remarks at the conference.

Professor John Nolon begins the colloquium with an article, entitled *The Erosion of Home Rule Through The Emergence of State-Interests in Land Use Control*, in which he explores the assumption that New York's failure to adopt a cogent state-wide land use system is due to the reluctance of the state legislature to interfere with "home rule," that is, local control of land use. He examines comprehensive systems being developed in other states which have progressed despite their strong home-rule traditions. Professor Nolon documents that New York courts have long held that home rule is subordinate to state-wide interests as defined by the legislature. His article identifies and discusses a wide variety of state interests that are being served by state statutes that preempt, limit and shape local control of the use of the land. In light of this evidence, he argues that the state legislature will adopt a cogent land use system, which influences local land use deci-

sions, when the legislature realizes that unguided local control of regional development is detrimental to the environment, the economy, and other key public interests.

Sarah J. Meyland's article, entitled *Land Use & The Protection of Drinking Water Supplies*, begins by defining an ideal level of quality for public drinking water, a level reflecting public policy notions of "absolute health protection." Toward the attainment of that ideal, Ms. Meyland outlines the various "costs" associated with satisfying the mandates of both the Safe Drinking Water Act (SDWA) and Surface Water Treatment Rules (SWTRs), such that water suppliers must either design "adequate" watershed protection plans or plan for filtration, in order to ensure the quality of public drinking water supplies. Then, because the cost of filtration could prove so prohibitive as to burden a city such as New York with "oceans of debt," Ms. Meyland advocates instead the employment of a mechanism for long-range land use planning to preserve watershed areas, and, by extension, the quality of drinking water. Finally, Ms. Meyland examines the frequent clashes between state governments and the rights of private developers, including Fifth Amendment constraints and challenges to recent legislation specifically aimed at benefiting sensitive water-quality protection areas.

Peter Q. Eschweiler's article, *In Accordance With A Comprehensive Plan, The Need for Planning Consistency in New York State*, describes his experience as Westchester County Planning Commissioner over a twenty-year period. During that period, Westchester County initiated a number of strategies, in areas such as affordable housing, water quality and open space, designed to help local land use policies respond to regional needs. The author presents a land use planner's view of the traditional structure which is current land use planning, and presents a more comprehensive and realistic configuration. Mr. Eschweiler's article suggests a departure from the traditional structure, and advocates the adoption of a third dimension in land use planning. This dimension would include a mandate for the most appropriate use of land and would establish consistency between state land use planning and the efforts of other state agencies. Further, Mr. Esch-

weiler suggests that New York's land use laws must be restructured so as to justify their existence, project a predictable outcome and consistently serve state interests.